

BEFORE THE THREE MEMBER DUE PROCESS PANEL
EMPOWERED BY THE MISSOURI STATE BOARD OF EDUCATION
PURSUANT TO RSMO SECTION 162.961 RSMO

)
)
Petitioner,)
vs.)
)
SPECIAL SCHOOL DISTRICT OF ST.)
LOUIS COUNTY and)
LADUE SCHOOL DISTRICT,)
)
Respondent.)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The appeal brought before the panel was originally filed by Attorney Ramon J. Morganstern as attorney for the parents of by letter to the Department of Elementary & Secondary Education dated January 28, 2004. The respondent Special School District of St. Louis County has filed a Motion to Dismiss or In the Alternative a Motion for Summary Judgment filed with the panel on July 7, 2004. Both motions deal with the issue of whether or not the present complaint was brought by the student who was born on August 14, 1983, or by her parents through Attorney Morganstern. At the time of the writing of this Finding of Fact and Conclusion of Law, would be days short of her 21st birthday. More than thirty (30) days have passed since the filing of the motion by the Special School District of St. Louis County.

On or about the 22nd day of June, 2004, the parents of discharged Mr. Morganstern. There is no way to determine from the papers filed whether also discharged Mr. Morganstern. The Chair has been informed that Mr. Morganstern filed with the Special School District notification that he was withdrawing as the attorney for the on or about June 22, 2004. The panel was not copied with the withdrawal memorandum.

On or about August 3, 2004, the Chair received from a letter of their intention not to hire an attorney to respond to the motions filed by the Special School District. In that notice to the Chair, there is no reference to the position of on whose behalf this matter was originally instigated.

The Chair has fully reviewed the Motion to Dismiss or In the Alternative the Motion for Summary Judgment, the memorandum and its supporting documents.

FINDINGS OF FACT

The Chair finds that is an emancipated person, having been born on , and at the filing of this decision is seven (7) days short of being the age of 21.

The Chair further finds that the record is vague as to whether or not was a party to these proceedings from the beginning. The Chair finds that, under the appropriate provisions of IDEA, are interested parties in the welfare of, but they themselves have no legal capacity to file a proceeding on behalf of, an emancipated person.

The Chair further finds that their reading of the documents supplied by the respondent school district indicate that, on January 9, 2002, was a person over the age of 18 and that and her parents were provided with a notice at that time that all services for would terminate upon her graduation.

The Chair further finds that did graduate in the spring of 2002.

CONCLUSION OF LAW

Parents do not have standing to bring the present petition because of the age of who in fact was 18 years old prior to graduation.

The Chair finds that any cause of action which would have benefited was time barred by the two year Statute of limitations commencing on January 9, 2002, according to the

file provided the Chair by the Department of Elementary & Secondary Education. The complaint filed by Attorney Morganstern was dated January 28, 2004, and as indicated earlier, the attorney's complaint letter does not represent that he was representing, but that he had filed the action on behalf of the parents. But assuming arguendo that the attorney did have the consent of to the action, the action was time barred. M.D. v. Southington Board of Education, 334 F. 3d 217 (2d Cir. 2003); R.R. v. Fairfax County School Board, 338 F. 3d 325 (4th Cir. 2003); Hall v. Knott County Board of Education, 941 F. 2d 402 (6th Cir. 1991); Mandy S. v. Fulton County School District, 205 F. Supp. 2d 1358 (N.D. Ga. 2000) (cause of action accrued at time when IEP was developed; IDEA does not require a "guaranteed outcome"); Strawn v. Missouri State Board of Education, 210 F. 3d 954, 958 (8th Cir. 2000).

The matter of, *et al. v. Special School District of St. Louis County* is dismissed with prejudice this 9th day of August, 2004.

SO ORDERED:

Chair

CERTIFICATE OF SERVICE

Copy of the above and foregoing Findings of Fact and Conclusions of Law sent by regular U.S. mail, postage prepaid, this _____ day of August, 2004, to the following:

Student

Parents

Mr. James G. Thomeczek
Thomeczek Law Firm, LLC
1120 Olivette Executive Parkway
Suite 210

St. Louis, MO 63132

Ms. Pam Williams

Missouri Department of Elementary & Secondary Education

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